

**BOARD OF COUNTY COMMISSIONERS**

**AGENDA ITEM SUMMARY**

Meeting Date: March 15, 2006

Bulk Item: Yes ☐ No ☒

Division: Growth Management

Department: Planning

Staff Contact Person: Jose Papa

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**AGENDA ITEM WORDING:**

Public hearing to consider adopting an ordinance amending the Monroe County Land Development Regulations to amend environmental regulations; deleting existing sections 9.5-336 through 9.5-343 to eliminate requirements for the Habitat Evaluation Index (HEI); creating new Section 9.5-336 to require an Existing Conditions Report, including vegetative survey; creating new Section 9.5-337 to protect upland vegetation through grant of Conservation Easements; creating new Section 9.5-338 to incorporate existing open space requirements for wetlands; revising Section 9.5-347 to provide for maximum clearing limits of native upland vegetation based upon the Tier system designation of the subject property.

**[2<sup>nd</sup> of 2 required public hearings]**

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**ITEM BACKGROUND:** On January 21, 2004 and in Ordinance # 018-2004 the BOCC directed staff to prepare draft text and map amendments and other supporting studies in order to effectuate the provisions of Goal 105 of the 2010 Comprehensive Plan and Rule 28-20.100 F.A.C. The Planning Commission reviewed the staff draft at four public hearings, amended the draft and recommend approval. Several stakeholder forums and two community workshops were held to review the proposed amendments. The draft ordinance has been revised by staff to reflect the direction given the staff by the Board at the May and June 2005 public hearing. Additional changes were made based on comments received from the Department of Community Affairs.

The Comprehensive Plan amendments related to these LDR amendments became effective after the appeal period expired on February 5, 2006.

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**PREVIOUS RELEVANT BOCC ACTION:**

Ordinance No. 018-2004 adopted June 16, 2004 directed staff to prepare text and map amendments to implement Goal 105. Goal 105 was adopted in Ordinance No. 20- 2002.

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**CONTRACT/AGREEMENT CHANGES:** None.

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**STAFF RECOMMENDATIONS:** Approval

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**TOTAL COST:** N/A

**BUDGETED:** Yes N/A No ☐

**COST TO COUNTY:** N/A

**SOURCE OF FUNDS:** N/A

**REVENUE PRODUCING:** Yes N/A No ☐ **AMOUNT PER MONTH** N/A **Year** ☐

**APPROVED BY:** County Atty X OMB/Purchasing ☐ Risk Management ☐

**DIVISION DIRECTOR APPROVAL:**

  
Ronda Norman

**DOCUMENTATION:** Included X

Not Required ☐

**DISPOSITION:** \_\_\_\_\_

**AGENDA ITEM #** \_\_\_\_\_

**ORDINANCE NO. 2006**

**AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS ADOPTING AMENDMENTS TO THE MONROE COUNTY LAND DEVELOPMENT REGULATIONS TO REVISE ENVIRONMENTAL REGULATIONS BY DELETING SECTIONS 9.5-336, 9.5-337, 9.5-338, 9.5-339, 9.5-339.1, 9.5-339.2, 9.5-339.3 9.5-340, 9.5-341, 9.5-342, AND 9.5-343 TO ELIMINATE REQUIREMENTS PERTAINING TO THE EXISTING CONDITIONS MAP AND HABITAT EVALUATION INDEX; CREATING NEW SECTION 9.5-336 TO REQUIRE AN EXISTING CONDITIONS REPORT, INCLUDING VEGETATIVE SURVEY AS PART OF DEVELOPMENT APPLICATION APPROVAL; CREATING NEW SECTION 9.5-337 TO ENHANCE PROTECTION OF UPLAND VEGETATION THROUGH GRANT OF CONSERVATION EASEMENTS; CREATING NEW SECTION 9.5-338 THAT INCORPORATES EXISTING OPEN SPACE REQUIREMENTS FOR WETLANDS; REVISING SECTION 9.5-347 TO PROVIDE FOR MAXIMUM CLEARING LIMITS OF NATIVE UPLAND VEGETATION BASED UPON ON THE TIER SYSTEM DESIGNATION OF THE SUBJECT PROPERTY; PROVIDING FOR SPECIFIC VESTING PROVISIONS; PROVIDING FOR REPEAL OF ALL ORDINANCES INCONSISTENT HERewith; PROVIDING FOR INCORPORATION IN THE MONROE COUNTY CODE OF ORDINANCES; DIRECTING THE PLANNING AND ENVIRONMENTAL RESOURCES DEPARTMENT TO TRANSMIT A COPY OF THIS ORDINANCE TO THE FLORIDA DEPARTMENT OF COMMUNITY AFFAIRS; AND, PROVIDING FOR AN EFFECTIVE DATE.**

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**WHEREAS**, the Monroe County Board of County Commissioners, during eight public hearings held in December, 2004, January, February, March, April, May, and June 2005, and March 2006, reviewed and considered the proposed amendments to the Land Development Regulations (LDRS) deleting the HEI requirements, requiring an existing conditions report including a vegetation survey, requiring a grant of conservation easement to protect open space vegetation and limiting the clearing of native upland vegetation dependent on the Tier system designation to implement Goal 105 of the 2010 Comprehensive Plan, Rule 28-20.100 F.A.C. and the Tier Overlay system; and

**WHEREAS**, the Monroe County Board of County Commissioners directed staff to prepare text and map amendments to the Year 2010 Comprehensive Plan and Land Development Regulations to base the County's environmental regulations protecting the habitat on the Year 2010 Comprehensive Plan Goal 105 Tier system rather than the existing Habitat Evaluation Index; and

**WHEREAS**, the Monroe County Board of County Commissioners makes the following Findings of Fact:

1. Goal 105 provides a comprehensive framework for future development and land acquisition for the next 20 years that considers the carrying capacity of the Florida Keys, reduces sprawl and promotes sustainability; and
2. The current LDRS require properties designated on the 1986 Habitat Maps as hammock and pineland to perform a Habitat Evaluation Index (HEI) to determine the amount of clearing permitted and the negative points awarded in ROGO and NROGO; and
3. The HEI is a subject of dispute, has specific weaknesses including problems with protocol in its application, and, since it is based on 1986 maps, does not take into consideration re-vegetation over the last twenty years; and
4. The Planning and Environmental Resources Department prepared draft amendments to Chapter 9.5 (Land Development Regulations), Monroe County Code, in response to the direction provide by the Board of County Commissioners and consistent with proposed amendments to the Comprehensive Plan; and
5. The Planning Commission, after hearing comments at four public hearings, made changes to the staff draft amendments and recommended approval of the proposed amendments to incorporate changes to the County's environmental regulations based on the Tier system and the elimination of the Habitat Evaluation Index requirement; and
6. The Planning and Environmental Resources Department made minor changes to the proposed draft based on direction of the Planning Commission and public testimony at the public hearing before the Board of County Commissioners in December 2004, including minor text revisions to ensure readability and correct typographical errors or omissions in the text; and
7. Subsequent to the adoption of amendments to the Comprehensive Plan by the Board of County Commissioners on September 22, 2005, the Planning and Environmental Resources Department prepared further amendments to the draft ordinance to ensure consistency with the adopted plan amendments; and
8. The ordinance removes the requirement for performing an HEI from the Land Development Regulations to determine habitat quality and scoring under ROGO and replaces it with a much simpler, less expensive, transparent system; and
9. Under the new Tier system the clearing of upland habitat is limited to 20 percent in Tier I, 40 percent in Tier II (Big Pine Key and No Name Key), and 40 percent in Tier III or 3,000 square feet, whichever is larger, with a maximum clearance of 7,500 square feet; and
10. Amendments to the Land Development Regulations enacted by this ordinance include an Existing Conditions Report, a Conservation Easement on upland native

vegetation and use of the 1986 Habitat Maps as a baseline to assure unlawful clearing has not/does not occur; and

11. The Board of County Commissioners has reviewed the proposed amendments to the Land Development Regulations deleting the HEI requirements from the Code, requiring an existing conditions report including a vegetation survey, requiring a grant of conservation easement to protect open space vegetation and limiting the clearing of native upland vegetation dependent on the Tier system designation, as recommended by the Planning Commission and the Planning and Environmental Resources Department; and

**NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA, THAT:**

**Section 1.** The proposed amendments to the Land Development Regulations are consistent with and further goals, objectives and policies of the Year 2010 Comprehensive Plan, particularly Goal 105 and the recently adopted set of comprehensive plan amendments to effectuate the Tier system.

**Section 2.** The following sections of the Monroe County Code are hereby deleted:

- o Section 9.5-336, Existing conditions map;
- o Section 9.5-337, Habitat analysis required;
- o Section 9.5-338, Waiver of habitat analysis;
- o Section 9.5-339, Habitat type analysis;
- o Section 9.5-339.1, Habitat analysis objective;
- o Section 9.5-339.2, Automatic high quality forest classification;
- o Section 9.5-339.3, Habitat analysis definitions and approach;
- o Section 9.5-340, Habitat analysis for high hammocks;
- o Section 9.5-341, Habitat analysis for low hammocks;
- o Section 9.5-342, Habitat analysis for palm hammocks; and,
- o Section 9.5-343, Habitat analysis for pinelands.

**Section 3.** Section 9.5-336, Monroe County Code, is hereby created that reads as follows:

**“Sec. 9.5-336. Existing conditions report.**

As part of an application for approval on lands containing upland native vegetation communities the applicant shall prepare and submit an existing conditions report including a survey that identifies the distribution and quality of native habitat and any observed endangered/threatened or protected species within the parcel or lot proposed to be developed in accordance with the standards of this division. The existing conditions report will be prepared by a biologist qualified under sec. 9.5-28, in a form approved by the director of planning and contain, at a minimum, the following:

(a) *Cover page:* The cover page shall contain the following:

(1) Legal description of parcel, including the Real Estate Number.

- (2) Property owner's name and address.
- (3) Date of report and site visits.
- (4) Consultant's name, agency and contact information.
- (5) Consultant's signature.

(b) *Summary:* A general description of site including discussion of habitat type, important features and presence and location of any disturbed areas.

(c) *Plant species list:* A list of species found in the survey provided in a matrix of the following five columns:

- (1) Column 1 - removed - estimates the number of that plant will be removed.
- (2) Column 2 - retained - indicates that one or more of that plant will remain.
- (3) Column 3 - common plant name.
- (4) Column 4 - scientific name.
- (5) Column 5 - status - threatened, endangered, or regionally important and other native species four inches or greater in diameter at four feet in height and exotic or pest plant status.

(d) *Animal species list:* A list of the endangered, threatened, or protected animal species observed during the site survey.

(e) *Site plan:* A site plan at a scale of one (1) inch equals twenty (20) feet or greater showing the location of all native plant species that are threatened, endangered, regionally important and areas of disturbance and exotic species."

**Section 4.** Section 9.5-337, Monroe County Code, is hereby created that reads as follows:

**"Section 9.5-337. Administration and compliance.**

Before a certificate of occupancy or final inspection approval may be issued for any structure, portion, or phase of a project subject to this division a grant of conservation easement running in favor of Monroe County shall be approved by the growth management director and the county attorney and recorded in the Official Public Records of Monroe County. The conservation easement shall state the amount of required upland native vegetation open space and prohibit activities within that open space, including removal, trimming or pruning of native vegetation; acts detrimental to wildlife or wildlife habitat preservation; excavation, dredging, removal or manipulation of the substrate;

activities detrimental to drainage, flood control, or water or soil conservation; dumping or placing soil, trash, or other materials; and any other restrictions as may be stated on the conservation easement.”

**Section 5.** Section 9.5-338, Monroe County Code, is hereby created that reads as follows:

**“Section 9.5-338 Wetland open space requirements.**

No development activities, except as provided for in this division, are permitted in mangroves, freshwater wetlands and in undisturbed saltmarsh and buttonwood wetlands; the open space requirement is one hundred (100) percent.”

**Section 6.** Section 9.5-347 (b),(c),and (d), Monroe County Code are hereby amended to read as follows:

“(b) *Percentage of clearing:* Clearing of upland native vegetation communities in the Tiers I, II, and III shall be limited to the following percentages:

<u>Tier</u>	<u>Permitted Clearing</u>
I	20 % of upland native vegetation*
II	40% of upland native vegetation (Big Pine Key and No Name Key Only)
III	40% of upland native vegetation or 3,000 square feet, whichever is greater; however, the maximum amount of clearing shall be no more than 7,500 square feet, regardless of the amount of upland native vegetative area.

\*Palm or cactus hammock is limited to only 10%.

(c) *Site baseline conditions:* The legal conditions of land existing as of February 28, 1986 and as depicted on the “December 1985 Habitat Classification Aerial Photographs,” shall be used as a baseline to determine the clearing that may be permitted on a site. The 1985 maps shall be supplemented by recent aerial photography and existing site analysis to determine any increases in the amount of upland native vegetated areas. Upland native vegetated areas cleared between 1986 and time of permit application shall be considered to still include upland native vegetation for purposes of determining the amount of open space and clearing permitted.

(d) *Ocean Reef Club clearing:* For the purpose of this section, upland native vegetated areas in Ocean Reef Club, shall be limited to clearing of forty (40) percent of the upland native vegetated areas.”

**Section 7.** Section 9.5-347(e), Monroe County Code, is hereby amended that reads as follows:

“(e) *Lot aggregation and clearing:* For ROGO applications that receive points for lot aggregation under Section 9.5-122.3 (a) (3), permitted clearing of vegetation shall be limited to the percentage of the property indicated in

paragraph (b) above or five-thousand (5,000) square feet, whichever is less.” Except that all applications received after 9/27/05 shall not receive points for lot aggregation if located within an area proposed for acquisition by public agencies for the purpose of resource protection and applications receiving points for aggregation cannot exceed the limits outlined in paragraph (b) above or 5,000 square feet, whichever is less, pursuant to the mandate of the Florida Administrative Commission by Rule 28-20.110 and 28-20.120 (effective 9/27/05).

**Section 8.** Notwithstanding the clearing provisions of Section 6 of this ordinance, the following vesting provisions shall apply upon the effective date of the ordinance:

1. Except as provided for in 2. below, any building permit application requiring an allocation award in the ROGO/NROGO system prior to the effective date of this ordinance shall comply with the extent of clearing authorized in the approved building permit application. Except that all applications received after 9/27/05 within Tier One shall not clear more than 5,000 square feet and shall not receive points for lot aggregation if within an area proposed for acquisition by public agencies for the purpose of resource protection pursuant to the mandate of the Florida Administrative Commission by Rule 28-20.110 and 28-20.120 (effective 9/27/05).
2. Any building permit issued pursuant to an active conditional use order approved by the Planning Director or Planning Commission prior to March 15, 2006, and authorized by a ROGO/NROGO allocation award or granting of the transfer of development rights from off-site under Sections 9.5-120.4 and 9.5-124.8 (a)(10), Monroe County Code, shall comply with the extent of clearing authorized in the approved conditional use order.
3. Any revisions to the extent of clearing approved by the permits or conditional use orders vested pursuant to 1. and 2. above, shall be required to comply with the clearing limits of this ordinance.

**Section 9.** If any section, subsection, sentence, clause or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such invalidity.

**Section 10.** All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed to the extent of said conflict. The repeal of an ordinance herein shall not repeal the repealing clause of such ordinance or revive any ordinance which has been repealed thereby.

**Section 11.** This ordinance does not affect prosecutions for ordinance violations committed prior to the effective date of this ordinance; does not waive any fee or penalty due or unpaid on the effective date of this ordinance; and does not affect the validity of any bond or cash deposit posted, filed, or deposited pursuant to the requirements of any ordinance.

**Section 12.** This ordinance shall be filed in the Office of the Secretary of State of Florida. This ordinance shall not become effective until July 14, 2006, but not prior to or without a notice issued by the Department of Community Affairs or Administration Commission approving the ordinance.

**Section 13.** This ordinance shall be transmitted by the Planning and Environmental Resources Department to the Florida Department of Community Affairs to determine the consistency of this ordinance with the Florida Statutes.

**Section 14.** The provisions of this ordinance shall be included and incorporated in the Code of Ordinances of the County of Monroe, Florida, as an addition or amendment thereto, and shall be appropriately numbered to conform to the uniform numbering system of the Code.

**PASSED AND ADOPTED** by the Board of County Commissioners of Monroe County, Florida, at a regular meeting of said Board held on the \_\_\_\_ day of \_\_\_\_\_, A.D. , 2006.

Mayor Charles "Sonny" McCoy \_\_\_\_\_  
Mayor Pro Tem Murray Nelson \_\_\_\_\_  
Commissioner George Neugent \_\_\_\_\_  
Commissioner David Rice \_\_\_\_\_  
Commissioner Dixie Spehar \_\_\_\_\_

BOARD OF COUNTY COMMISSIONERS OF  
MONROE COUNTY, FLORIDA

BY: \_\_\_\_\_  
Mayor/Chairperson

(SEAL)  
ATTEST: DANNY KOHLAGE, CLERK

BY: \_\_\_\_\_  
Deputy Clerk

